

APPENDIX D

SUPREME COURT OF NEW JERSEY
FAMILY DIVISION PRACTICE COMMITTEE
SUBCOMMITTEE ON GENERAL PROCEDURES AND RULES

REVISED STATEMENT CONCERNING CREWS V. CREWS

Lee M. Hymerling, Esquire, Chair
Jane R. Altman, Esquire
Hon. Diane B. Cohen, P.J.F.P.
Hon. Michael K. Diamond, J.S.C.
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Hon. Howard Kestin, J.A.D.
Hon. Charles M. Rand, P.J.F.P.
Patricia Garity Smits, Esquire
Edward S. Snyder, Esq.
Mark H. Sobel, Esquire

Aurea E. Vazquez, Esquire AOC Staff Attorney
Patrick Judge, Jr., Esquire, Subcommittee Staff

The subcommittee gratefully notes the participation of Hon. Ellen L. Koblitz, P.J.F.P and of Hon. Deanne M. Wilson, J.S.C. both of whom joined the subcommittee in its deliberations on the issues addressed by this Report.

The subcommittee also publicly recognizes and thanks Ms. Vazquez and Mr. Judge for their substantial efforts.

June 14, 2001

**SUPREME COURT FAMILY DIVISION PRACTICE COMMITTEE
SUBCOMMITTEE ON GENERAL PROCEDURES AND RULES**

REVISED STATEMENT CONCERNING CREWS V. CREWS

To assist the Family Part bench as it implements the mandates of Crews v. Crews, 164 N.J. 11 (2000), particularly as it applies to uncontested divorce hearings in which the parties and counsel seek to incorporate by reference or attachment agreements that include a provision for permanent alimony, the Family Division Practice Committee, Subcommittee on General Procedures and Rules has agreed upon the following formation of questions which it suggests deserve further study by the full Committee. This report builds upon the "Preliminary Statement Concerning Crews v. Crews" issued by last term's General Procedure Subcommittee issued in July, 2000 and incorporates comments made during the May, 2001 meeting of the full Committee.

The issue: At page 25 in the Crews opinion the Supreme Court of New Jersey wrote:

In all divorce proceedings, trial courts must 'consider and make specific findings' under N.J.S.A. 2A:34-23(b) when awarding alimony pursuant to a divorce decree.

The opinion continued on page 26:

An alimony award that lacks consideration of the factors set forth in N.J.S.A. 2A:34-23(b) is inadequate, and one finding that must be made is the standard of living established in the marriage. N.J.S.A. 2A:34-23(b)(4). The court should state whether the support authorized will enable each party to live a lifestyle 'reasonably comparable' to the marital standard of living.

It is noted that both quoted passages refer broadly to that portion of N.J.S.A. 2A:34-23(b) that recite a listing of twelve specific factors and one general catch-all factor that the Family Part has been legislatively required to consider in entering orders for alimony.

Crews could be interpreted to be more broadly based than simply requiring the Family Part to make findings concerning the standard of living enjoyed by parties during a marriage. Indeed, the first quoted passage from Crews refers comprehensively to all of the factors stated in N.J.S.A. 2A:34-23(b) while in the second passage, the Court observed that "... an alimony award that lacks consideration of the factors set forth in N.J.S.A. 2A:34-23(b) is inadequate..." and then specifically indicates that one finding that must be made relates to standard of living. (emphasis added)

The subcommittee reports that it has surveyed how the various vicinages have addressed the issue raised by Crews. The subcommittee's survey revealed that there has not been a uniform statewide approach adopted by the Family Part and that, instead, local practices have controlled. Although there has been a broad based realization that the concerns relating to Crews must be addressed at the time of all final divorce hearings including uncontested hearings, different vicinages handle the issue differently and, indeed, even in the same vicinage, different judges handle the issue differently.

Having reached the conclusion that there is not statewide uniformity, the subcommittee reaffirms the Family Part Practice Committee's long standing belief that local practice rules and procedures should be disfavored and that statewide uniformity is a desirable and achievable goal. The Crews issue should be uniformly addressed by all 15 vicinages and 21 counties.

The Concerns That Any Solution Must Address: The subcommittee recognizes that any interim or final recommendation must successfully address three separate concerns, each of which the subcommittee considers to be of equal importance. They are as follows:

1. **The need to create at least a limited record as to marital lifestyle for use should there be later proceedings.** This is the concern addressed by Crews. There can be no doubt that, in growing numbers, dissolution cases return to the Family Part for post judgment consideration. There is a need, at the time of an original divorce, for a base point to be established so that it might be available for later judicial consideration. Either the parties must concur that the alimony agreement reached is adequate to maintain the marital lifestyle, or base point information and at least a generalized finding must be made as to the nature of the marital standard of living.

2. **Given the congestion of the Family Part's docket and the time pressures placed upon individual Family Part judges, the length of bench time devoted to required "standard of living" findings should not create unreasonable additional time demands upon the Family Part.** There can be no doubt that the Family Part is burdened by a prodigious docket whose demands even now tax the most diligent judges. From domestic violence to custody; from abuse and neglect to delinquency; from families in crisis to adoption; from divorce to termination of parental rights, the Family Part is confronted with time pressures that exceed those in other divisions. Traditionally, an uncontested divorce proceeding will consume between 5 and 15 minutes of bench time. The subcommittee concludes the requirements Crews has imposed will slow the proceedings and extend the amount of time needed to process even an uncontested divorce. Additionally, the subcommittee concludes that any approach to the issue that would require extensive testimony, production of evidence and cross-examination, leading to findings based upon conflicting testimony would inhibit settlement and would place time demands on our system that the Family Part is not geared to handle. Recognizing how unlikely it will be that significant additional judicial resources will be able to be assigned to the task, it is incumbent upon the Judiciary to devise procedures that will address the Supreme Court's legitimate concerns as addressed in Crews while at the same time

conserving judicial time and energy.

3. **The importance of permitting litigants to settle their own matters without unnecessary judicial intervention:** The subcommittee is mindful that our Supreme Court has repeatedly affirmed the desirability of parties reaching their own resolution in Family Part matters. As early as 1977 in Smith v. Smith, 72 N.J. 350, 360 (1977), the Court emphasized "the strong public policy favoring stability of agreements." Similarly, in Peterson v. Peterson, 85 N.J. 635, 645 (1981), the Court noted that it would be "shortsighted and unwise for Courts to reject out-of-hand consensual solutions to vexatious personal matrimonial problems that have been advanced by the parties themselves." These principles were reaffirmed in the more recent decision of Konzelman v. Konzelman, 158 N.J. 185 (1999).

The subcommittee reaffirms the position taken on this issue during the summer of 2000 shortly after the Crews opinion to the effect that "the importance of permitting parties to reach consensual agreements cannot be overemphasized and constitutes an essential ingredient in moving cases expeditiously through the system." The subcommittee also reaffirms its prior statement that proceedings should not BE so detailed so as to dissuade parties from negotiating and achieving amicable resolutions to dissolution cases.

Among the concerns our subcommittee addressed was the theme often echoed during the work of the Supreme Court Special Committee on Matrimonial Litigation. That Committee received testimony at multiple hearings that reflected the public's concern that divorce proceedings last too long and cost too much. The subcommittee concludes that the public will neither understand nor approve of any procedure that imperils settlements reached by the litigants through negotiations. The subcommittee finds it difficult to accept the notion of a contested hearing as part of an uncontested divorce with a full settlement agreement dealing exclusively with the contested issues of either what was the marital standard of living or whether a reasonably comparable standard can be maintained. The subcommittee is further concerned that if litigants are forced into what might become adversarial proceedings even after a settlement has been reached, ill will might result negating the beneficial results reached through the settlement.

The recommended solution: In uncontested cases, when settlement includes a permanent alimony component, it is important that the Family Part in exercising its broad discretion to receive a negotiated settlement, make not only appropriate findings that the parties have reached an accord but also whether they anticipate that the accord will permit the marital standard of living to be preserved.

In the event that litigants indicate that they have not been able to agree as to the marital standard of living, or agree upon the marital standard of living but disagree that the marital standard of living will be able to be maintained, it is necessary that the standard of living be briefly described on the record. The Court will also have to receive into the record testimony from both the supporting and dependent spouse as to whether each believes that the standard of

living will be able to be maintained.

The subcommittee has chosen to modestly expand the questions in this regard recommended by its preliminary report and has concluded that, with the expanded procedure recommended herein, the mandate of the Crews opinion will have been satisfied at least until such time as the Supreme Court will be able to react to our recommendations.

Inherent in our recommended solution are the following requirements:

(A) **Requirement That There Be A Reasonably Current (defined as not more than one year old) filed Case Information Statement Together with A Completed Lifestyle Questionnaire Where Parties Cannot Agree on Lifestyle or That Lifestyle Can Be Met with Settlement:** In all matters in which the parties do not agree that the agreed upon alimony will permit the marital lifestyle to be reasonably maintained, each party will be required to have filed a Case Information Statement before an uncontested divorce hearing will be scheduled and that those case information statements will be marked into evidence at the time of trial with each party being required to verify the accuracy of their CIS. In the event that a CIS has not been filed within one year of the date of the uncontested hearing, an updated CIS should be required. Litigants should also be required to complete a brief lifestyle questionnaire which should also be marked into evidence at the time of the uncontested hearing. A proposed form of questionnaire is attached hereto. It is stressed that neither the CIS nor the questionnaire requirement is intended to apply to any case in which the litigants have agreed that the agreed upon alimony will permit the marital lifestyle to be reasonably maintained.

The subcommittee is mindful that some may express concern about the cost of preparing a more current CIS. The subcommittee is also mindful that some may challenge the accuracy of what may be considered as self serving budgets. The subcommittee concludes that the CIS form represents the only generally accepted standardized presentation of the required information. The bench and bar have become accustomed to the form for almost two decades. A primary purpose of the CIS form has always been to provide our Courts with standardized financial information, certified as truthful by the parties, to which easy reference can be made. Although not unanimous, a significant majority of the subcommittee has concluded that this is a indispensable starting point.

(B) **Requirement of Stipulation or Limited Testimony and Findings Where Parties Cannot Agree That Lifestyle Can Be Met with Settlement:** In all matters in which the parties do not agree that their settlement will permit the marital lifestyle to be reasonably maintained, testimony will have to be adduced as set forth below and that the parties will either be required to stipulate or the Court will have to make a limited finding as to the nature of the marital lifestyle citing illustrative components of that lifestyle.

In all instances questioning must be posed as to whether each party is reasonably satisfied that all of the provisions of the settlement as a whole are fair, equitable and acceptable.

At this stage, the subcommittee recommends the following procedure:

A. Basic questions to be posed:

Question No. 1 (to be posed in all cases):

DO YOU AGREE THE SETTLEMENT YOU HAVE REACHED WILL PERMIT YOU TO LIVE AT A STANDARD OF LIVING REASONABLY COMPARABLE TO THAT DURING THE MARRIAGE TAKING INTO CONSIDERATION ALL THE FINANCIAL ARRANGEMENTS SET FORTH IN THE AGREEMENT OR SETTLEMENT?

In the event that both parties respond to the first question affirmatively, it is unnecessary to pose any further questions concerning lifestyle.

In the event, however, that the parties are unable to respond to Question No. 1 affirmatively, Question No. 2 from the subcommittee's preliminary report should be asked as follows:

Question No. 2 (to be posed whenever Question No. 1 has been answered in the negative) :

A. **DO YOU AND YOUR SPOUSE AGREE AS TO THE STANDARD OF LIVING DURING THE MARRIAGE?**

B. **BASED UPON THE CONTENTS OF YOUR AGREEMENT, CAN YOU MAINTAIN A REASONABLY COMPARABLE STANDARD OF LIVING?**

C. **WOULD YOU BRIEFLY DESCRIBE WHAT YOU BELIEVE TO HAVE BEEN YOUR MARITAL STANDARD OF LIVING?**

In addition to Question 2 the following supplemental questions should be posed:

3. **DID YOU PREPARE A CASE INFORMATION STATEMENT TO REFLECT WHAT YOU BELIEVED WERE THE COSTS NECESSARY FOR YOU TO MAINTAIN A LIFESTYLE COMPARABLE TO THE MARITAL LIFESTYLE. (MARK EACH CIS INTO EVIDENCE)**

4. **IS YOUR CASE INFORMATION STATEMENT ACCURATE OR WAS**

THAT STATEMENT ACCURATE AT THE TIME THAT IT WAS COMPLETED?

4A. DID YOU COMPLETE THE LIFESTYLE QUESTIONNAIRE AND IS IT ACCURATE?

IT IS NOTED THAT THE QUESTIONS SET FORTH BELOW HAVE BEEN CREATED TO BE APPLICABLE TO MOST CASES THAT THE FAMILY PART IS LIKELY IN ENCOUNTER. THE ACTUAL QUESTIONS POSED ARE LEFT TO THE INDIVIDUAL FAMILY PART JUDGE BASED UPON THAT JUDGE'S UNDERSTANDING OF THE PARTICULAR MATTER.

5. COULD YOU DESCRIBE BRIEFLY THE SPECIFIC STANDARD OF LIVING ENJOYED DURING THE MARRIAGE IN THE FOLLOWING SPECIFIC AREAS:

A. QUESTIONS RELATED TO SHELTER AND HOUSING (specific questions to be posed only if not included in CIS):

1. Describe the house and residential arrangement over the past ____ years (# of years to be determined by Family Part Judge) for the parties. Describe the property attributes:

- a. Owned
- b. Rented
- c. Type of house and brief description

2. Amount of monthly Mortgage Payment Including Principal and Interest, Real Estate Taxes, insurance, etc?

3. Date of Purchase and purchase price of the property; mortgage balance

B. QUESTIONS RELATED TO TRANSPORTATION

- 1. Describe the mode and method of transportation for daily travel for the last five years prior to the filing of the Complaint.
- 2. Car - Type, Model, Year

- a. Leased - new or old
- b. Owned - new or old
- c. Payments and months left of payments
- d. Over the course of your marriage, how often did you change vehicles?

C. PERSONAL EXPENDITURES, INCLUDING FOOD, RESTAURANT, CLOTHING, HEALTH RELATED, ENTERTAINMENT, VACATIONS AND UNUSUAL DISCRETIONARY EXPENDITURES.

- 1. What was the marital standard of living concerning food, restaurant, clothing, health related, entertainment and vacation expenses?
- 2. Briefly describe the essence of your standard of living focusing upon personal expenses.
- 3. Are there any particular expenses about which you believe the Court should be aware in determining the standard of living enjoyed during the marriage?
- 4. Does your family have any recurring extraordinary expenses, needs--e.g. medical problems, hobbies, customs, etc.
- 5. Has your family been able to save a portion of your available income?

6 Employment of each spouse

- A. Length of time at the job or position - part time/full time
- B. Type of position/employment - Special training/skills
- C. Earnings, Gross - set forth 3-5 years for each, describe fringe benefits if relevant

7. Education Levels/Vocations Skills - either spouse

1. When achieved
2. Time necessary to complete

The subcommittee has concluded that from these questions, the Family Part Judge should be able to make a finding sufficient to satisfy the Crews mandate.

The following findings are proposed:

THE COURT HAS HEARD AND CONSIDERED THE TESTIMONY OF THE PARTIES AND HAS RECEIVED INTO EVIDENCE THE CASE INFORMATION STATEMENT OF PLAINTIFF THAT HAS BEEN MARKED P-1 AND OF THE DEFENDANT THAT HAS BEEN MARKED AS D-1. THE PARTIES LIFESTYLE QUESTIONNAIRES HAVE BEEN MARKED AS P-2 AND D-2. BASED UPON THE TESTIMONY OF THE PARTIES AND THEIR CASE INFORMATION STATEMENTS THE COURT FINDS THAT THE PARTIES HAVE LIVED A STANDARD OF LIVING CHARACTERIZED BY THE PARTIES HAVING LIVED IN A HOME THAT THEY HAVE TESTIFIED IS WORTH BETWEEN XXXX AND XXXX; THAT PLAINTIFF DRIVES A XXXX (*INSERT YEAR AND MODEL*) AUTOMOBILE THAT IS XXXX (*INSERT LEASED OR OWNED*); THAT DEFENDANT DRIVES A XXXX (*INSERT YEAR AND MODEL*) AUTOMOBILE THAT IS XXXX (*INSERT LEASED OR OWNED*); AND THAT THE PARTIES HAVE XXXX (*INSERT BRIEF STATEMENT DESCRIBING A LIMITED NUMBER (one or two) EXAMPLES OF THE PARTIES' LIFESTYLE OR EXTRAORDINARY EXPENSES*).

THE COURT FURTHER FINDS THAT PLAINTIFF HAS PRESENTED A CASE INFORMATION STATEMENT REFLECTING TOTAL EXPENSES OF XXXX AND DEFENDANT HAS PRESENTED A CASE INFORMATION STATEMENT REFLECTING TOTAL EXPENSES OF XXXX. THE COURT RECOGNIZES THAT THE PARTIES DO NOT AGREE ON THE ACCURACY OF THE RESPECTIVE LIFESTYLE BUDGETS.

Alternatively, the parties may stipulate on a statement that would then be accepted by the Court and appended to the Final Judgement of Divorce that might read as follows including a

category as follows:

AS TO THE STIPULATION REQUIRED TO FULFIL THE MANDATE OF CREWS v. CREWS, 164 N.J. 11 (2000), THE PARTIES STIPULATE AS FOLLOWS:

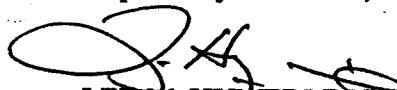
THE PARTIES HAVE LIVED A STANDARD OF LIVING THAT IS CHARACTERIZED BY THE PARTIES HAVING LIVED IN A HOME THAT THEY HAVE TESTIFIED IS WORTH BETWEEN XXXX AND XXXX; THAT PLAINTIFF DRIVES A XXXX (*INSERT YEAR AND MODEL*) AUTOMOBILE THAT IS XXXX (*INSERT LEASED OR OWNED*); THAT DEFENDANT DRIVES A XXXX (*INSERT YEAR AND MODEL*) AUTOMOBILE THAT IS XXXX (*INSERT LEASED OR OWNED*); AND THAT THE PARTIES HAVE XXXX (*INSERT BRIEF STATEMENT DESCRIBING A LIMITED NUMBER (one or two) EXAMPLES OF THE PARTIES' LIFESTYLE OR EXTRAORDINARY EXPENSES*).

PLAINTIFF HAS PRESENTED A CASE INFORMATION STATEMENT REFLECTING TOTAL EXPENSES OF XXXX AND DEFENDANT HAS PRESENTED A CASE INFORMATION STATEMENT REFLECTING TOTAL EXPENSES OF XXXX. THE PARTIES LIFESTYLE QUESTIONNAIRES HAVE BEEN MARKED AS P-2 AND D-2. THE PARTIES RECOGNIZE THAT THEY DO NOT AGREE ON THE ACCURACY OF THE RESPECTIVE LIFESTYLE BUDGETS.

Recommendation Concerning Uniformity of Practice: The subcommittee strongly recommends that the procedure proposed herein should be adopted statewide. The procedure, if approved by the full Practice Committee should be presented as soon as possible to the Conference of Presiding Judges for its approval and the Conference should be asked to implement the practice in the courtrooms of all vicinages. Local practice permutations should be discouraged.

Recommendation as to Request for Supreme Court Directive: The subcommittee recommends that the Supreme Court should be asked to issue a directive or issue an administrative determination consistent with the terms contained herein.

Respectfully submitted,


LEE M. HYMERLING
Subcommittee Chair

MARITAL LIFESTYLE STATEMENT

Lifestyle Questionnaire to be completed by All Litigants (in uncontested cases) and affixed to Judgment of Divorce.

Plaintiff: _____

Defendant: _____

Docket No.: _____

Are you the Plaintiff or Defendant: _____

Date of Separation: _____

What was your average gross earned income for the three years prior to the filing of the Complaint for Divorce, (or date of separation, whichever is earlier) _____

What was your spouse's earned income for the three years prior to the filing of the Complaint for Divorce, (or date of separation, whichever is earlier) _____

What is your current yearly earned income: _____

What is your spouse's current yearly earned income: _____

What was your average unearned income (from investments, or other sources) for the three years prior to the filing of the Complaint for Divorce, (or date of separation, whichever is earlier) _____

What was your spouse's average unearned income for the three years prior to the filing of the Complaint for Divorce, (or date of separation, whichever is earlier) _____

What was your joint unearned income for the three years prior to the filing of the Complaint for Divorce, (or date of separation, whichever is earlier) _____

Set forth the vacations you and your spouse took in the three years preceding the filing of the Complaint for Divorce, (or date of separation, whichever is earlier) including location, length of stay and approximate cost: _____

State the make, model and year of the automobile you were driving at the time of the filing of the Complaint for Divorce, (or separation, whichever is sooner) _____

State the name, model and year of the automobile your spouse was driving at the time of the filing of the Complaint for Divorce, (or separation, whichever is sooner) _____

State how often you and your spouse went to restaurants during the last three years of your marriage prior to separation: _____

Set forth the types of restaurants and average costs: _____

If you owned a home during the marriage, set forth the approximate fair market value of the home which you owned at the time for the filing of the Complaint for Divorce, the mortgage principal balance and the monthly mortgage and tax payment, if applicable: _____

If you did not own a home, set forth your monthly rent: _____

Set forth the approximate value of any other real estate, such as vacation homes or rental properties, owned by you or your spouse during the three years prior to the filing of the Complaint for Divorce: _____

- a. If no longer owned, state date of transfer and amount of consideration received: _____

Signed _____

Dated _____

June 8, 2001

VIA FACSIMILE

Eugene D. Serpentelli, A.J.S.C.
Ocean County Courthouse
118 Washington Street
Courtroom 1
Toms River, NJ 08754

Dear Judge Serpentelli:

I am writing this letter to express my respectful dissent from a portion of the thoughtful Crews report prepared by the Family Division Practice Committee Subcommittee on General Procedures and Rules. I disagree with the Crews subcommittee report insofar as it indicates that a trial judge in a settled divorce case need not make findings regarding the marital standard of living or whether the dependant spouse can obtain a reasonably comparable standard of living with the agreed-upon support. In my view the full paragraph on page 33 of the Crews opinion in the context of that opinion requires the Court to make such findings when the parties cannot agree on the ability of the dependant spouse to maintain a reasonably comparable standard or agree that the standard of living cannot be met but cannot agree on the level of the standard of living. That paragraph reads as follows:

In this regard, we note that the basis for a subsequent demonstration of changed circumstances may exist in the class of cases in which the initial support award, coupled with the supported spouse's expected effort to contribute to his or her own support, was determined at the time of entry of the divorce decree to be insufficient to allow the supported spouse to maintain a standard of living reasonably comparable to the marital standard of living. Our ruling today will require trial courts to ensure that the record addresses that critical issue at the time of entry of the divorce decree in all cases. When appropriate, a trial court

Eugene D. Serpentelli, A.J.S.C.

June 8, 2001

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should expressly find that there is a higher need existing at the time of the initial award based on the standard of living maintained during the marriage, and that the higher need for support could not be met by the supporting spouse at the time of the divorce.

I agree wholeheartedly with the excellent suggestions in the report regarding the suggested procedures to make findings through the use of the suggested questionnaire and current case information statements, as well as other evidence where appropriate.

In Bergen County, during the past year since Crews was decided, we have held brief hearings and made findings in the rare settled cases where the parties could not agree on the standard of living or could not agree on the ability to meet same. We process about 100 settled cases per month (not including defaults) and have had no significant delays or disruptions due to these post-Crews procedures.

Thank you for the opportunity to participate with such a distinguished committee in an effort to resolve extremely difficult and important issues.

Very truly yours,

Ellen L. Koblitz, P.J.F.P.

ELK:mk

cc: Lee M. Hymerling, Esq.
Aurea Vazquez, Esq.